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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

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SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR: 4811

DATE COMPLAINT FILED: September 25, 1998

DATE OF NOTIFICATION: September 25, 1998

DATE ACTIVATED: January 26, 1999

STAFF MEMBER: Mark Shonkwiler
Clinett Short

COMPLAINANT: Trey Walker

RESPONDENTS: John Spratt for Congress Committee
and Bernard Neal Ackerman, as treasurer

RELEVANT STATUTES: 2 U.S.C. § 441d(a)

INTERNAL REPORTS CHECKED: Disclosure Reports
FEC Indexes

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter originated as a complaint submitted by Trey Walker, ("Complainant"), Executive Director of the South Carolina Republican Party. Complainant alleges that the John Spratt for Congress Committee and Bernard Neal Ackerman, as treasurer, ("the Committee"), violated 2 U.S.C. § 441d(a) by distributing campaign signs without proper disclaimers identifying who authorized and paid for the communication. According to the complaint, these campaign signs expressly advocated the election of John Spratt for Congress.

II. FACTUAL AND LEGAL ANALYSIS

Pursuant to 2 U.S.C. § 441d(a), all expenditures for communications which expressly advocate the election or defeat of a clearly identified candidate, or expenditures to solicit any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising, must include a disclaimer. Pursuant to Section 441d(a), the disclaimer must clearly state the identity of the person or committee who paid for the communication and whether the communication was authorized by the candidate or the candidate's committee. According to 11 C.F.R. § 110.11(a)(1), the disclaimer shall be presented in a clear and conspicuous manner. A disclaimer need not appear on the front of the communication as long as it appears within the communication, except on communications such as billboards that contain only a front face. 11 C.F.R. § 110.11(a)(5)(i).

A. Complaint

According to the complaint, John Spratt for Congress Committee purchased and distributed yard signs and 4' x 8' road signs expressly advocating the election of John Spratt to U.S. Congress. The complaint states that the yard signs failed to display any type of authorization notice identifying who paid for the communications. Complainant alleges his belief that the Spratt Campaign distributed over 300 yard signs in direct violation of the law.

B. Response

In response to the complaint, respondents admit that they distributed a limited number of both yard signs and road signs during both the 1996 and 1998 election cycles that lacked the required disclaimer. Respondents state that all signs purchased for the 1998 election displayed the proper disclaimer, but that some portion of the yard and road signs recycled from the 1996

election lacked the proper disclaimer. Specifically, respondents state that they purchased one lot of yard signs and road signs from Screen Art, Inc. in Greenville, South Carolina during the 1996 election cycle which did not contain the proper disclaimer.¹ Respondents claim that this mistake occurred in the 1996 election due to the printer's error.² Respondents state that an unspecified number of these signs were distributed before the omission of the authorization was discovered.

Once the omission was detected during the 1996 election cycle, the Committee stated that they called the Commission staff for guidance. According to the response, Commission staff advised the Committee that the omission could be corrected by stamping an appropriate authorization on the face of the signs.³ The Committee attempted to rectify the mistake by stamping the appropriate disclaimers on the face of all signs still in their possession, and whenever detected, to all signs that had already been distributed during the 1996 election cycle.

The respondents state that at the conclusion of the 1996 election, approximately 100 yard signs and 30 road signs were recovered and stored for re-use in the 1998 election. According to the Committee some of these signs lacked the authorization label, and in storage, were mixed with others bearing the authorization.

¹ The Committee's 1996 July Quarterly Report discloses a disbursement to Screen Art Printing totaling \$7,209.93 on June 18, 1996, and its 1996 Pre-General Report discloses a disbursement to Screen Art Printing totaling \$672 on October 16, 1996.

² The response did not indicate whether the Committee had an opportunity to prevent the "printer's error" by reviewing a proof prior to distribution. Thus, it is not even clear that the Commission would agree that the initial omission of the disclaimer was the printer's fault and not the campaign's.

³ Although the Reports Analysis Division has no formal record of having provided this advice, the recommended corrective action seems consistent with normal practice.

C. Discussion

The respondents admit that an unknown portion of the recycled signs that were distributed in connection with the 1998 election lacked the required disclaimer. Respondents do not dispute that the language on the 1996 signs constituted express advocacy.⁴ Based on these facts, this Office recommends that the Commission find reason to believe that respondents violated 2 U.S.C. § 441d.

This Office recommends that the Commission offer to enter into conciliation with the respondents prior to a finding of probable cause to believe.

⁴ The only information received about the sign's actual language is a proof of a 1998 sign provided by the respondent. See Attachment 1, page 4.

D. Conclusion

For the reasons stated above, this Office recommends that the Commission find reason to believe that the John Spratt for Congress Committee and Bernard Neal Ackerman, as treasurer, violated 2 U.S.C. § 441d(a).

III. RECOMMENDATIONS

1. Find reason to believe that the John Spratt for Congress Committee and Bernard Neal Ackerman, as treasurer violated 2 U.S.C. § 441d(a), and enter into conciliation prior to a finding of probable cause to believe.
2. Approve the attached Factual and Legal Analysis.
3. Approve the attached conciliation agreement and the appropriate letter.

Lawrence M. Noble
General Counsel

Date

4/13/99

BY:


Lois G. Lerner
Associate General Counsel

Attachments:

1. Response to complaint
2. Factual and Legal Analysis
3. Proposed Conciliation Agreement



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/VENESHE FEREBEE-VINES
COMMISSION SECRETARY

DATE: APRIL 19, 1999

SUBJECT: MUR 4811 - First General Counsel's Report
dated April 13, 1999.



The above-captioned document was circulated to the Commission on

Wednesday, April 14, 1999.

Objection(s) have been received from the Commissioner(s) as
indicated by the name(s) checked below:

Commissioner Elliott	<u>XXX</u>
Commissioner Mason	—
Commissioner McDonald	—
Commissioner Sandstrom	—
Commissioner Thomas	—
Commissioner Wold	<u>XXX</u>

This matter will be placed on the meeting agenda for

Tuesday, April 27, 1999.

Please notify us who will represent your Division before the Commission on this matter.